IN THE HIGH COURT OF JUDICATURE AT PATNA
CR. REVISION No.195 of 2007
AJIT TALUKDAR
Versus
STATE OF BIHAR & ANR
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7. 01.07.2008. Heard learned counsel for the petitioner and the counsel for Opposite Party No.2.

2. This Cr. Revision application is directed against the order dated 20th January, 2007 passed by Sub-Divisional Judicial Magistrate, Barh at Patna in Complaint Case No. 350(C) of 1996, whereunder the prayer of the petitioner to close the proceedings in the complaint case in view of Section 446 of the Companies Act, 1956 (hereinafter referred to as "the Act") on account of the winding up of M/s A.Talukdar and Company (Fertilizer) Private Limited (hereinafter referred to as "the Company") was rejected. Petitioner herein is an accused in the said complaint case registered for the offence under Sections 406, 420 and 120B of the Penal Code on the allegation that the complainant had supplied Bone Meal to the Company and the petitioner at the relevant time was the Director of the Company. The price of the supplied fertilizer was never paid and a complaint was filed alleging cheating and breach of trust against the Company and the three Directors. After cognizance was taken in the complaint proceedings, matter came to this Court at the instance of the petitioner herein vide Cr. Misc. No. 1576 of 1997 and this Court after hearing the counsel for the parties and as per the agreement between the petitioner and Opposite Party No.2 under orders dated 3.10.1997, Annexure-2 directed that a sum of Rs. 1,00,000/- be paid to Opposite

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Party No.2 in three instalments of Rs. 50,000/- by 17.11.1997, Rs. 25,000/- by 19.12.1997 and the remaining amount of Rs. 25,000/- by 19.1.1998 but it appears that petitioner did not make payment to the complainant as was agreed before this Court. Opposite Party No.2 thereafter was left with no option but to request the court below to take coercive steps against the petitioner for payment of the amount as was agreed before this Court under orders dated 3.10.1997 and the court below considering the request of Opposite Party No.2 cancelled the bail bonds of the petitioner whereafter the present petition was filed praying inter alia to direct the court below not to proceed in the matter in view of Section 446 of the Act as after passing of the order dated 3.10.1997 the Company went into liquidation on 9.11.1998 and the order winding up the Company was passed on 23.4.1999, which is contained in Annexure-3 to this application. It is submitted on behalf of the petitioner that as the Company went into liquidation on 9.11.1998, the amount agreed before this Court on 3.10.1997 could not be paid as the petitioner herein does not have any fund of his own and the assets of the Company are in possession of the Official Liquidator. During hearing of this application learned counsel for the petitioner has again placed reliance over Section 446 of the Companies Act, 1956, which is quoted hereinbelow:-

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"When a winding up order has been made or the official liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the court and subject to such terms as the court may impose."

3. Perusal of the aforesaid provision makes it abundantly clear that once the company has went into liquidation no suit or any legal proceeding shall be proceeded with or commenced against the company. From perusal of the complaint itself it is evident that pursuant to an agreement between the company and the complainant the complainant had agreed to supply bone meal (organic manure) to the petitioner and the bone meal worth Rs. 1,41,978/- was supplied by Opposite Party No.2 to the Company, as such, there is no difficulty in concluding that the amount said to have been cheated by the petitioner is nothing but the dues against the Company for which Opposite Party No.2 should raise claim before the Company Judge in the liquidation proceeding and the complaint case filed alleging cheating and breach of trust against Opposite Party No.2 should await the result of liquidation proceeding.

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4. In view of my observations above, the impugned order dated 20th January, 2007 passed by Sub-Divisional Judicial Magistrate, Barh at Patna in Complaint Case No. 350(C) of 1996 is set aside, however, with liberty to the complainant to realize his dues of Rs. 1,41,978/- by raising claim before the Company Judge in Company Petition No. 12 of 1998 pending before the Calcutta High Court.

5. This Cr. Revision application is, accordingly, disposed of.

(V.N.Sinha,J.)

A.F.R./P.K.P.